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U.S. DISTRICT COURT  
DISTRICT OF COLORADO

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GREGORY D. LANGHAM  
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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 04 *Wm* - 2078 (CBS)

BY \_\_\_\_\_ DEP. CLK

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

SAINZ ENTERPRISES, LLC, a Colorado corporation; and  
JOE P. SAINZ III, individually and as an officer of Sainz Enterprises,

Defendants.

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**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF**

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Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), for its complaint alleges:

1. The Commission brings this action under Sections 13(b) and 19 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 57b; the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Telemarketing Act"), 15 U.S.C. §§ 6101-08; and Sections 505(a)(7) and 522(a) of the Gramm-Leach-Bliley Act ("GLB Act"), 15 U.S.C. §§ 6805(a)(6) and 6822(a), to obtain permanent injunctive relief, rescission of contracts, restitution, disgorgement, and other equitable relief for Defendants' violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a); the FTC's Trade Regulation Rule, entitled the "Telemarketing Sales

Rule” (“TSR”), 16 C.F.R. Part 310; Title V of the GLB Act, 15 U.S.C. §§ 6801-09; the FTC’s Privacy of Consumer Information Rule (“Privacy Rule”), 16 C.F.R. Part 313; and Section 521 of the GLB Act, 15 U.S.C. § 6821.

### **JURISDICTION AND VENUE**

2. Jurisdiction is based on 15 U.S.C. §§ 45(a), 53(b), 57b, 6102(c), 6105(b), 6805(a)(7), and 6822(a), and on 28 U.S.C. §§ 1331, 1337(a), and 1345.
3. Venue in the United States District Court for the District of Colorado is proper under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b) and (c).

### **PARTIES**

4. Plaintiff, the Federal Trade Commission, is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58, as amended. The Commission is charged with enforcing Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce, and the TSR, 16 C.F.R. Part 310, which prohibits deceptive or abusive telemarketing practices. In addition, the Commission enforces Subtitle A of Title V of the GLB Act, 15 U.S.C. §§ 6801-09, and its implementing regulation, the FTC’s Privacy Rule, 16 C.F.R. Part 313, which require, inter alia, that financial institutions provide notices accurately describing their privacy practices to their customers. The Commission is also charged with enforcing Subtitle B of Title V of the GLB Act, 15 U.S.C. §§ 6821-27, which prohibits any person from using false pretenses to obtain the “customer information of a financial institution.” The Commission may initiate federal district court proceedings, in its own name by its designated attorneys, to enjoin violations of any provision of law it enforces and to

secure such other equitable relief as may be appropriate in each case, including but not limited to restitution for injured consumers. 15 U.S.C. §§ 53(b), 57b, 6105(b), 6805(a)(7), and 6822(a).

5. Defendant Sainz Enterprises, LLC, is a Colorado corporation whose principal place of business is located at 15270 Kingston Court, Brighton, Colorado 80602. Sainz Enterprises transacts or has transacted business in the District of Colorado and throughout the United States.

6. Defendant Joe P. Sainz III, is owner, manager, and registered agent for Sainz Enterprises. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, participated, or assisted in the acts or practices set forth in this complaint. He resides or has recently resided at 15270 Kingston Court, Brighton, Colorado 80602, and transacts or has transacted business in the District of Colorado and throughout the United States.

### **COMMERCE**

7. At all times material to this complaint, Defendants have maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

### **DEFENDANTS’ BUSINESS PRACTICES**

8. From 2002 through early 2003, Defendants marketed advance-fee credit cards and their own credit repair materials to consumers through third party telemarketers. The telemarketers referred to this promotion as “Credit Securities Resources” when they contacted consumers.

9. As part of the Credit Securities Resources scheme, Defendants typically targeted consumers who “needed credit” or were trying to “rebuild” their credit, including consumers who had recently declared bankruptcy. Defendants provided lists of these consumers, or “leads,” to their telemarketing agents to use for the Credit Securities Resources promotion.

10. Consumers targeted by Defendants were pitched an “unsecured” VISA or MasterCard credit card as well as certain bonus products, including Defendants’ “Credit Repair Kit.” Consumers were told that in order to receive the credit card, they must first pay a fee of approximately \$209, payable by bank account debit. Consumers were then asked to provide their bank account information to process their payment.

11. After obtaining consumers’ personal information, including their checking account numbers, the telemarketers provided this information to Defendants, who used it to deduct the advance fee directly from consumers’ bank accounts.

12. At no point either during or after the sales transaction were consumers informed of Defendants’ privacy practices. Defendants never provided any of their consumers with a notice describing Defendants’ privacy practices, even after Defendants debited these individuals’ bank accounts.

13. Several days or weeks after the phone transaction, Defendants arranged to mail their “Credit Repair Kit” and related items to consumers. Defendants also arranged for consumers to receive a stored-value card. The stored-value card was not a credit card; consumers had to load money onto the card in order to use it. Consumers never received a credit card as part of the Credit Securities Resources scheme.

### **VIOLATIONS OF SECTION 5 OF THE FTC ACT**

14. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits unfair or deceptive acts or practices in or affecting commerce. Misrepresentations or omissions of material fact constitute deceptive acts or practices pursuant to Section 5(a) of the FTC Act.

### **COUNT ONE**

15. Plaintiff incorporates by reference all of the foregoing paragraphs.

16. In numerous instances, in connection with the telemarketing of advance-fee credit cards, Defendants, through their agent telemarketers, have represented, expressly or by implication, that after paying Defendants a fee, consumers are highly likely or guaranteed to receive an unsecured major credit card, such as a Visa or MasterCard credit card.

17. In truth and in fact, in numerous instances, after paying Defendants a fee, consumers do not receive an unsecured major credit card, such as a Visa or MasterCard credit card.

18. Therefore, the representation set forth in paragraph 19 is, and was, false and misleading and constitutes a deceptive act or practice in or affecting commerce in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

### **THE TELEMARKETING SALES RULE**

19. The Commission promulgated the Telemarketing Sales Rule pursuant to Section 6102(a) of the Telemarketing Act, 15 U.S.C. § 6102(a). The TSR became effective on December 31, 1995, and subsequent amendments relevant to this Complaint became effective on March 31, 2003. References to specific provisions of the TSR set forth in this Complaint are to the

amended TSR, 16 C.F.R. Part 310.

20. The TSR prohibits telemarketers and sellers from misrepresenting any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of a sales offer. 16 C.F.R. § 310.3(a)(2)(iii).

21. In addition, the TSR prohibits telemarketers and sellers from, among other things, requesting or receiving payment of any fee or consideration in advance of obtaining or arranging a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit. 16 C.F.R. § 310.4(a)(4).

22. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), violations of the TSR constitute unfair or deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

23. Defendants are “sellers” or “telemarketers” engaged in “telemarketing,” as those terms are defined in the Telemarketing Sales Rule. 16 C.F.R. §§ 310.2(z), (bb), and (cc).

## COUNT TWO

24. Plaintiff incorporates by reference all of the foregoing paragraphs.

25. In numerous instances, in connection with the telemarketing of advance-fee credit cards, Defendants have misrepresented that consumers are highly likely or guaranteed to receive an unsecured major credit card, such as a VISA or MasterCard credit card.

26. Defendants have thereby violated Section 310.3(a)(2)(iii) of the Telemarketing

Sales Rule, 16 C.F.R. § 310.3(a)(2)(iii).

### **COUNT THREE**

27. Plaintiff incorporates by reference all of the foregoing paragraphs.

28. In numerous instances, in connection with the telemarketing of advance-fee credit cards, Defendants have requested or received payment of a fee or consideration in advance of consumers obtaining a credit card after having guaranteed or represented a high likelihood of success in obtaining or arranging for the acquisition of an unsecured major credit card, such as a VISA or MasterCard credit card, for such consumers.

29. Defendants have thereby violated Section 310.4(a)(4) of the TSR, 16 C.F.R. § 310.4(a)(4).

### **SUBTITLE A OF THE GLB ACT AND THE PRIVACY RULE**

30. Since July 1, 2001, financial institutions subject to the FTC's enforcement jurisdiction have been obligated to comply with Subtitle A of Title V of the GLB Act, 15 U.S.C. §§ 6801-09, and the FTC's Privacy Rule, 16 C.F.R. Part 313. 16 C.F.R. § 313.18(a).

31. Under the Privacy Rule, a "financial institution" is an entity that is significantly engaged in a financial activity that is covered by Section 4(k) of the Bank Holding Company Act, 12 U.S.C. § 1843(k), and its implementing regulations. 16 C.F.R. § 313.3(k)(1). Extending credit is a covered financial activity. 16 C.F.R. 313.3(k); 12 U.S.C. § 4(k)(4)(F); 12 C.F.R. § 225.28(b)(1).

32. An individual who applies to a financial institution for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether that credit is

extended. 16 C.F.R. § 313.3(e). A financial institution has a customer relationship with a consumer with whom it contracts to extend credit. § 16 C.F.R. 313.4(c)(3)(B).

33. Section 503 of the GLB Act, 15 U.S.C. § 6803, and Section 313.4 of the Privacy Rule, 16 C.F.R. 313.4, require a financial institution to provide its consumers with a clear and conspicuous notice that accurately describes the institution's policies and practices with respect to disclosing and protecting nonpublic personal information not later than when the customer relationship is established. Information that a consumer provides to a financial institution to obtain a financial product or service is considered nonpublic personal information. 16 C.F.R. § 313.3(o).

#### **COUNT FOUR**

34. Plaintiff incorporates by reference all of the foregoing paragraphs.

35. Defendants, through their telemarketing agents, have represented to consumers that they will obtain a credit card from or through Defendants. Defendants are therefore a financial institution for purposes of Subtitle A of Title V of the GLB Act and the Privacy Rule.

36. In the course of making this representation to consumers, Defendants have collected nonpublic personal information and payment from consumers for the promised credit card. Consumers have accepted Defendants' offer of a credit card by agreeing to have their personal bank accounts debited by Defendants to pay for the credit card. These consumers have therefore entered into a customer relationship with Defendants.

37. Defendants have not delivered to their customers notices governing Defendants' privacy practices.



38. Defendants have thereby violated Section 503 of the GLB Act, 15 U.S.C. § 6803, and Section 313.4 of the Privacy Rule, 16 C.F.R. § 313.4.

#### **SUBTITLE B OF TITLE V OF THE GLB ACT**

39. Section 521 of the GLB Act, 15 U.S.C. § 6821, became effective on November 12, 1999, and has since remained in full force and effect. Section 521(a) of the GLB Act, 15 U.S.C. § 6821(a), prohibits any person from “obtain[ing] or attempt[ing] to obtain . . . customer information of a financial institution relating to another person . . . 2) by making a false, fictitious, or fraudulent statement or representation to a customer of a financial institution.”

40. Section 527(2) of the GLB Act, 15 U.S.C. § 6827(2), defines “customer information of a financial institution” as “any information maintained by or for a financial institution which is derived from the relationship between the financial institution and a customer of the financial institution and is identified with the customer.” “Customer information of a financial institution” includes consumers’ personal bank account numbers.

41. Section 522(a) of the GLB Act, 15 U.S.C. § 6822(a), empowers the Commission to enforce Section 521 of the GLB Act, 15 U.S.C. § 6821, “in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act [“FDCPA”] to enforce compliance with such Act.” Section 814 of the FDCPA, 15 U.S.C. § 1692i, provides that “[a]ll of the functions and powers of the Commission under the [FTC Act] are available to the Commission to enforce compliance with” the FDCPA. Section 814 of the FDCPA also provides that a violation of the FDCPA “shall be deemed an unfair or deceptive act or practice in violation of” the FTC Act.

## **COUNT FIVE**

42. Plaintiff incorporates by reference all of the foregoing paragraphs.

43. In numerous instances, in connection with the marketing of advance-fee credit cards, Defendants induce consumers to divulge their personal financial information, including their personal bank account numbers, by representing, expressly or by implication, that after paying Defendants a fee, consumers are highly likely or guaranteed to receive an unsecured major credit card, such as a VISA or MasterCard credit card.

44. In truth and in fact, in numerous instances, after paying Defendants a fee, consumers do not receive an unsecured major credit card, such as a VISA or MasterCard credit card.

45. By making such false representations to consumers who are customers of a financial institution, Defendants have fraudulently obtained from consumers their personal bank account numbers.

46. Therefore, Defendants' acts or practices violate Section 521 of the GLB Act, 15 U.S.C. § 6821.

## **CONSUMER INJURY**

47. Consumers throughout the United States have suffered, and continue to suffer, substantial monetary loss as a result of Defendants' unlawful acts and practices. In addition, Defendants have been unjustly enriched as a result of their unlawful practices. Absent injunctive relief by this Court, Defendants are likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

### **THIS COURT'S POWER TO GRANT RELIEF**

48. Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, and Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), empower this Court to issue a permanent injunction against Defendants' violations of the FTC Act, the Telemarketing Sales Rule, the Privacy Rule, and the GLB Act, and, in the exercise of its equitable jurisdiction, to order such ancillary relief as rescission, restitution, and disgorgement of profits resulting from Defendants' unlawful acts or practices, and other remedial measures.

### **PRAYER FOR RELIEF**

49. WHEREFORE, plaintiff Federal Trade Commission, pursuant to Sections 13(b) and 19 of the FTC Act, 15 U.S.C. §§ 53(b) and 57b, Section 6(b) of the Telemarketing Act, 15 U.S.C. § 6105(b), Sections 505(a)(7) and 522(a) of the GLB Act, 15 U.S.C. §§ 6805(a)(7) and 6822(a), and this Court's own equitable powers, requests that this Court:

- a. Permanently enjoin Defendants from violating the FTC Act, the Telemarketing Sales Rule, the GLB Act, and the Privacy Rule;
- b. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendants' violations of the FTC Act, the Telemarketing Sales Rule, the GLB Act, and the Privacy Rule, including, but not limited to, rescission of contracts, the refund of monies paid, and the disgorgement of ill-gotten gains; and
- c. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: October 6, 2004

Respectfully submitted,

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